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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,359	01/15/2004	Lili Cheng	MS306033.01/MSFTP499US	5320
27195	7590	04/06/2009		
AMIN, TUROCY & CALVIN, LLP			EXAMINER	
127 Public Square			HEFFINGTON, JOHN M	
57th Floor, Key Tower				
CLEVELAND, OH 44114			ART UNIT	PAPER NUMBER
			2179	
			NOTIFICATION DATE	DELIVERY MODE
			04/06/2009	ELECTRONIC

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/758,359  
Filing Date: January 15, 2004  
Appellant(s): CHENG ET AL.

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Nilesh S. Amin  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 12/12/2008 appealing from the Office action mailed 14 May 2008.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
3. Claims 1-6, 8, 9, 11, 12, 27-31, 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoakum et al. (US 7,139,797 B1).

Claim 1: Yoakum discloses a system that facilitates notifications, comprising:

- a. a state component that receives information relating to a state of at least one entity, wherein an entity is an individual or group of individuals (column 3, lines 28-67, column 4, lines 1-13);
- b. a notifications component that dynamically renders at least one graphical indicia representative of the entity's state to at least one user (column 1, lines 46-48, column 3, lines 28-67, column 4, lines 1-67, column 6, lines 5-15, column 11, lines 11-25)

but does not disclose the notification component determines graphical indicia to render based upon a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state.

However, Yoakum discloses measuring (weighing) user communication activity or participation to estimate the user's availability. Once the activity is measured, then the system and method formulate a prioritized list of possible communication methods. The degree of participation of the user in a communication activity and the list of communication methods is sent to other subscribing users. Some users may receive different availability information and a different list of communication methods (column 3, lines 28-67, column 4, lines 1-67, column 6, lines 5-15, column 9, lines 49-59, column 11, lines 11-25). Inherent in the calculation of availability and the list of communications

sent to different users is the computation of a cost/benefit factor. The system must calculate the cost/benefit of sending varying availability and communication methods to different users. Further, the system must calculate a cost/benefit of prioritizing one communication method over another. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add the notification component determines graphical indicia to render based upon a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state. One could have been motivated to add the notification component determines graphical indicia to render based upon a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state to Yoakum because a user might want to know the cost/benefit of prioritizing a list of alternate communication methods and the cost benefit of sending different availability and communication method list to different users.

Claim 2: Yoakum discloses the system of claim 1, and further discloses the notification component renders graphical indicia as a function of the at least one user's device's capability (column 3, lines 28-67, column 4, lines 1-67).

Claim 3: Yoakum discloses the system of claim 1, and further discloses the graphical indicia changes based upon the length of time the entity is in the same state (column 1, lines 30-39).

Claim 4: Yoakum discloses the system of claim 1, and further discloses an inference component that infers the state of the entity based on extrinsic data (column 3, lines 28-67, column 4, lines 1-67).

Claim 5: Yoakum discloses the system of claim 1, and further discloses the notification component dynamically renders annotations or comments as a function of the entity's state, wherein the entity inputted annotations or comments for each entity state (column 11, lines 11-25).

Claim 6: Yoakum discloses the system of claim 1, and further discloses the user specifies one or more graphical indicia that each correlates to a context of the entity's state (column 3, lines 28-67, column 4, lines 1-67, column 10, lines 40-67, column 11, lines 1-25).

Claim 7: (Cancelled)

Claim 8: Yoakum discloses the system of claim 1, but does not disclose the entity defines the order in which users will receive the graphical indicia representative of the

entity's state. However, Yoakum discloses a profile that "can define different categories of subscribers for which different presence information is provided. Based on available state information, the presence system can provide different views of presence for different subscribers to allow the user to **control delivery** and use of presence information. Accordingly, different subscribers may receive different presence information based on the same participation and state information and communication capabilities." (column 4, lines 44-52) Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add the entity defines the order in which users will receive the graphical indicia representative of the entity's state to Yoakum. One could have been motivated to add the entity defines the order in which users will receive the graphical indicia representative of the entity's state to Yoakum because Yoakum defines different priorities for different subscribers and it is reasonable to postulate that a user of Yoakum would want to render information to higher priority users before lower priority users.

Claim 9: Yoakum discloses the system of claim 1, and further discloses the notifications component is a hardware component that renders indicia as a function of device capabilities (column 10, lines 10-67, column 11, lines 1-10, figure 2B).

Claim 10: (Cancelled)



Claim 11: Yoakum discloses the system of claim 1, and Yoakum further discloses the entity defines a plurality of sets of graphical indicia representing the entity's states, each set comprises at least one graphical indicium that is different from a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user (column 4, lines 44-52).

Claim 12: Yoakum discloses the system of claim 1, and further discloses the notification component is used to facilitate dynamic rendering of the graphical indicia for at least one of instant messaging, e-mail, and telephone interaction (column 9, lines 49-59).

Claims 13-26 (Withdrawn)

Claim 27: Yoakum discloses a method of facilitating message notifications, comprising: receiving state information associated with a state of at least one entity, wherein an entity is an individual or group of individuals; and presenting the at least one graphical indicia to the at least one user (column 3, lines 28-67, column 4, lines 1-67, column 6, lines 5-15, column 9, lines 49-59, column 11, lines 11-25) but does not disclose dynamically rendering at least one user selected graphical indicia representative of the state based upon cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state. However, Yoakum discloses measuring (weighing) user communication activity or participation to estimate the users availability. Once the

activity is measured, then the system and method formulate a prioritized list of possible communication methods. The degree of participation of the user in a communication activity and the list of communication methods is sent to other subscribing users. Some users may receive different availability information and a different list of communication methods (column 3, lines 28-67, column 4, lines 1-67, column 6, lines 5-15, column 9, lines 49-59, column 11, lines 11-25). Inherent in the calculation of availability and the list of communications sent to different users is the computation of a cost/benefit factor. The system must calculate the cost/benefit of sending varying availability and communication methods to different users. Further, the system must calculate a cost/benefit of prioritizing one communication method over another. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add dynamically rendering at least one user selected graphical indicia representative of the state based upon cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state to Yoakum. One could have been motivated to add dynamically rendering at least one user selected graphical indicia representative of the state based upon cost associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit of rendering graphical indicia that correctly represents the entity's state to Yoakum because a user might want to know the cost/benefit of prioritizing a list of alternate communication methods and the cost benefit of sending different availability and communication method list to different users.

Claim 28: Yoakum discloses the method of claim 27, but does not disclose ranking the personalized graphical indicia according to at least one of a number of comments, a number of accesses, and popularity of use. However, Yoakum discloses subscribers ranking users whose presence information is desired (column 6, lines 36-52).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add ranking the personalized graphical indicia according to at least one of a number of comments, a number of accesses, and popularity of use to Yoakum. One could have been motivated to add ranking the personalized graphical indicia according to at least one of a number of comments, a number of accesses, and popularity of use to Yoakum because a subscriber may wish that the system automatically rank users that the subscriber communicates with more often, i.e. most popular, ahead of users the subscriber communicates with less often.

Claim 29: Yoakum discloses the method of claim 27, but does not disclose providing multiple tiles of the at least one graphical indicia for a particular state, wherein each tile differs in part according to a user that the at least one graphical indicia will be presented. However, Yoakum discloses subscribers ranking users whose presence information is desired (column 6, lines 36-52) and ranking communication methods associated with users ranked by subscribers (column 11, lines 11-25). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add providing multiple tiles of the at least one graphical indicia for a particular state, wherein each tile differs in part according to a user that the at least one

graphical indicia will be presented to Yoakum. One could have been motivated to add providing multiple tiles of the at least one graphical indicia for a particular state, wherein each tile differs in part according to a user that the at least one graphical indicia will be presented to Yoakum because 1) it is common in the art to graphically represent entities such as users with graphical tiles (US 2003/0020671 A1, paragraph 0019, figure 1), and 2) it would be useful to Yoakum for subscribers to rank users according to the prioritized list of communications methods associate with each user.

Claim 30: Yoakum discloses the method of claim 27, but does not disclose the user presented a plurality of graphical indicia representative of states of a plurality of entities, the user ordering display of the graphical indicia according to priority of the entities. However, Yoakum discloses a subscriber (user) receiving a list of a plurality of users (entities) (column 6, lines 28-31, column 10, lines 23-26) and filtering or otherwise configuring the types of presence information requested (column 13, lines 33-36). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add to Yoakum. One could have been motivated to add the user presented a plurality of graphical indicia representative of states of a plurality of entities, the user ordering display of the graphical indicia according to priority of the entities to Yoakum because the subscriber (user) in Yoakum, as the user (entity) might have a greater need to contact some users than other users.

Claim 31: Yoakum discloses the method of claim 30, but does not disclose

automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities. However, Yoakum discloses a subscriber (user) receiving a list of a plurality of users (entities) (column 6, lines 28-31, column 10, lines 23-26) and filtering or otherwise configuring the types of presence information requested (column 13, lines 33-36). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities to Yoakum. One could have been motivated to add automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities to Yoakum because a user typically contacts more important users more frequently than less important users, i.e. frequency is one way to prioritize a list of users.

Claims 32-37. (Withdrawn)

Claim 38: Yoakum discloses a system embodied on computer readable storage medium that facilitates notifications, comprising:

- a. means for receiving information relating to a state of at least one entity, wherein an entity is an individual or group of individuals (column 3, lines 28-67, column 4, lines 1-13);

- b. means for dynamically rendering at least one graphical indicia representative of the entity's state to at least one user (column 1, lines 46-48, column 3, lines 28-67, column 4, lines 1-67, column 6, lines 5-15, column 11, lines 11-25),
- c. means for the at least one entity to define a plurality of sets of graphical indicia representing the entity's states, each set comprises at least one graphical indicia that is different for a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user (column 4, lines 44-52).

but does not disclose the notification component determines graphical indicia to render based upon a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state.

However, Yoakum discloses that a user sets up a profile with a set of rules including availability information with respect to different groups and individuals and communication methods. In other words, the user's availability and preferred communication methods may appear different to different other users under the same circumstances. Yoakum also discloses that there are limitless variations in profile and rule constructions for evaluating participation information along with any state information and communication capabilities for the presence categories of subscribers and generating presence information to send to subscribing presence applications, and

that depending on the presence rules, changes in the user participation level, state changes or changes in communication capabilities from a given device may or may not impact the presence information. Given the user's state information, level of communication and communication capabilities, Yoakum **estimates** the user's availability (column 4, lines 37-52, column 6, lines 11-15, column 12, lines 58-67, column 13, lines 1-7).

Merriam-Webster Online (<http://www.merriam-webster.com/dictionary>) defines **estimate** as to judge tentatively or approximately the value, worth, or significance of **b**: to determine roughly the size, extent, or nature of **c**: to produce a statement of the approximate cost of. Merriam-Webster Online further states **estimate** implies a judgment, considered or casual, that precedes or takes the place of actual measuring or counting or testing out. According to Merriam-Webster Online, formulating an estimate involves approximating a cost of something.

When a user in Yoakum formulates the rules by which the system estimates the various availability measures for different individuals and groups, the user cannot anticipate all of the individuals who might want to contact him/her or all of the circumstances under which he/she might be contacted. The user must make a best-guess estimation for his/her availability to specific groups and individuals under envisaged circumstances.

Yoakum uses the following example to illustrate a set of rules that a user might formulate:

For example, when the user is actively participating in the communication session, the profile may dictate that no one should attempt to contact the user. When the user is an inactive participant in the communication session, the profile may dictate a select group of colleagues and a spouse that may contact the user while all others should not attempt interactive contact (column 4, lines 52-58).

Taking this example, the user has calculated a cost-benefit in excluding all individuals and groups from communicating when he is participating in a communication session and then allowing some individuals and groups to contact him when he is inactive in the communication session. An example cost for excluding all individuals and groups from communicating when he is participating in a communication session, including his wife, is that the user might not be notified of a family emergency. The user has calculated that his business at hand while participating in the communication session has greater benefit than the percentage expectancy that a family emergency will occur. These cost-benefit calculations get incorporated the user into the rules that he formulates for determining his availability. Merriam-Webster Online defines factor as "to include or admit as a factor -used with in or into<factor inflation into our calclations>, i.e. factoring is not calculating. Therefore it is inherent in the estimation of the user's availability to factor the cost-benefit calculations of the user into the estimation of availability of the user by the system.

## **(10) Response to Argument**

### **(10.1) Prior Art of Record**



(column 3, lines 28-67, column 4, lines 1-67) Yoakum discloses an invention that provides presence information to subscribers based on the degree to which a user is actively participating in a communication session. The presence information is based on processing rules. The resultant presence information informs the subscriber whether the user can be interrupted to accept other communications while engaged in the communication session. If the user can be contacted, the presence information may also identify the most appropriate methods to contact the user during the communication session.

The participation information may be derived from a variety of types of monitoring devices, which are capable of monitoring the user's actual or relative participation in the communication session by monitoring media activity. The monitoring device may be the user's actual communication device; a device supporting the user's communication device, such as a telephone switch or proxy; or a dedicated monitoring device having the capability of detecting the degree of user participation by measuring the amount the user speaks or the number of messages sent or read by the user. The monitoring device may simply measure the actual amount of voice content created by the user or compare the voice contribution of the user with respect to the other participants in the communication session.

Other information, such as the state of the user's communication devices, location, and alternate communication capabilities, may also be used to better determine if and how the user may be contacted when engaged in the communication session. The state information bears on the presence or availability of the user and may

take many forms. The sources of state information and communication capabilities are devices used by a user throughout a normal day and configured to provide state information to the presence system. The sources may be able to monitor normal user interactions and automatically provide corresponding state information to the presence system without requiring the user to enter or otherwise provide information bearing on their status or availability. Additionally, the user may provide state information and communication capabilities to the presence system directly or indirectly via an associated device.

The sources may be devices associated with the user that support communications with the user, and are configured to provide information bearing on the device's communication capability in general or at any given time. Many communication devices, such as mobile terminals, may facilitate wireless telephony in addition to text-based messaging including instant messaging, email, and short messaging service (SMS). As such, the presence system is capable of directly or indirectly gathering the communication capabilities of the sources.

Assuming the user can be contacted, the presence system may evaluate the state information and the communication capabilities of the sources of the user to create presence information further including a preferred way or a prioritized list of ways to communicate with the user in general or when the user is participating in another communication session. Once created, the presence information is then delivered to subscribers. In addition to identifying the list of ways to communicate with the user, the presence information may include information ranging from a complex analysis of state

information and communication capabilities from the user and associated devices to simply the states of selected devices or status provided by the user.

Based on a profile provided by the user, the presence system evaluates the participation information alone or in combination with the state information and the communication capabilities of the sources associated with the user to create the presence information to deliver to subscribers identifying the preferred way or a prioritized list of ways to communicate with the user when participating in a communication session. The profile can define different categories of subscribers for which different presence information is provided. Based on available state information, the presence system can provide different views of presence for different subscribers to allow the user to control delivery and use of presence information. Accordingly, different subscribers may receive different presence information based on the same participation and state information and communication capabilities. For example, when the user is actively participating in the communication session, the profile may dictate that no one should attempt to contact the user. When the user is an inactive participant in the communication session, the profile may dictate a select group of colleagues and a spouse that may contact the user while all others should not attempt interactive contact. Preferably, the presence information bears on how to communicate with the user based on the user's degree of participation in the communication session and the communication capabilities for devices associated with the user. The following outlines numerous sources of information bearing on the degree of user participation, the availability of the user, the communication capabilities of devices associated with the

user, and the state of devices associated with the user, along with the provisioning and operation of a presence system.

(column 6, lines 5-15) Importantly, the presence system 20 is also adapted to gather participation information from a variety of devices, which will be described further below. As noted, the participation information bears on the extent to which a user is engaged in a communication session and is beneficial in determining whether the user can be contacted while engaged in the communication session. The state information and the communication capabilities associated with the user may be used to provide a better estimate as to the availability of the user to additional communications while engaged in the communication session.

(column 11, lines 11-25) If the user is inactive, the presence application 24 may respond to a request to contact the user by selecting an available method of communication of the subscriber device 64 having the highest priority, and initiating communication using that method. Alternatively, the presence application 24 may associate an icon with a given user and control the form of the icon in a manner indicating the best method to contact a given user. By viewing the icon, the subscriber can quickly determine the best method to use to communicate with the user. Additionally, the presence application 24 may present a prioritized list of available communication methods from which to choose. Those skilled in the art will recognize numerous ways for a subscriber to receive user presence information providing a prioritized list of methods to contact a user.

**(10.2) Argument 1: Yoakum does not disclose a utility component that factors cost to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state, as cited in claims 1, 27 and 38.**

The examiner points out that the claim is drawn to rendering indicia that represents an entity's state. This is disclosed in Yoakum at column 3, lines 38-49. The examiner conceded that this limitation is not cited in Yoakum. Therefore, the appellant must argue that Yoakum fails to disclose a utility component that **factors cost** to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state. The examiner has conceded that Yoakum does not disclose a utility component that **factors cost** to the at least one user associated with rendering graphical indicia that incorrectly represents the entity's state versus benefit to the at least one user of rendering graphical indicia that correctly represents the entity's state. The examiner has argued that this limitation would have been obvious to one of ordinary skill to add this limitation to Yoakum.

To support this assertion, the examiner points to the supporting disclosure in the written description of the instant application. At page 5, lines 26-29, the written description states "A utility component 118 interfaces to the notifications component 108 to factor costs associated with rendering an incorrect image (or profile data) versus the benefit of rendering a correct image (or profile data)." The written description of the

instant invention references the term "factor" in only one other location, page 14, lines 20-21, "The shrink factor parameter (i.e., 0.7) defines the reduced size of subsequent underlying rows of images." The latter reference to "factor" has an entirely different meaning than the former reference. In fact, there is no other description of the term "factor" in the first reference, including a definition or a defining context.

Yoakum states "based on a profile provided by the user, the presence system evaluates the participation information alone or in combination with the state information and the communication capabilities of the sources associated with the user to create the presence information to deliver to subscribers identifying the preferred way or a prioritized list of ways to communicate with the user when participating in a communication session. The profile can define different categories of subscribers for which different presence information is provided. Based on available state information, the presence system can provide different views of presence for different subscribers to allow the user to control delivery and use of presence information. Accordingly, different subscribers may receive different presence information based on the same participation and state information and communication capabilities." (column 4, lines 37-52). Yoakum further states that "the state information and the communication capabilities associated with the user may be used to provide a better estimate as to the availability of the user to additional communications while engaged in the communication session." (column 6, lines 11-15). In addition, Yoakum states "Those skilled in the art will recognize limitless variations in profile and rule constructions for evaluating participation information along with any state information and communication

capabilities for the presence categories of subscribers and generating presence information to send to subscribing presence applications. Further, any combination of current and past device state information may be used to determine the presence information. Preferably, the presence information is automatically updated for each presence category, if necessary, when changes in state or communication capabilities are detected. Depending on the presence rules, changes in the user participation level, state changes or changes in communication capabilities from a given device may or may not impact the presence information. If the presence information does not change, then there may not be a need to update the subscribing presence applications 24." (column 12, lines 58-67, column 13, lines 1-7).

To paraphrase Yoakum, a user sets up a profile with a set of rules including availability information with respect to different groups and individuals and communication methods. In other words, the user's availability and preferred communication methods may appear different to different other users under the same circumstances. Yoakum also discloses that there are limitless variations in profile and rule constructions for evaluating participation information along with any state information and communication capabilities for the presence categories of subscribers and generating presence information to send to subscribing presence applications, and that depending on the presence rules, changes in the user participation level, state changes or changes in communication capabilities from a given device may or may not impact the presence information. Given the user's state information, level of

communication and communication capabilities, Yoakum **estimates** the user's availability.

Merriam-Webster Online (<http://www.merriam-webster.com/dictionary>) defines **estimate** as to judge tentatively or approximately the value, worth, or significance of **b**: to determine roughly the size, extent, or nature of **c**: to produce a statement of the approximate cost of. Merriam-Webster Online further states **estimate** implies a judgment, considered or casual, that precedes or takes the place of actual measuring or counting or testing out. According to Merriam-Webster Online, formulating an estimate involves approximating a cost of something.

When a user in Yoakum formulates the rules by which the system estimates the various availability measures for different individuals and groups, the user cannot anticipate all of the individuals who might want to contact him/her or all of the circumstances under which he/she might be contacted. The user must make a best-guess estimation for his/her availability to specific groups and individuals under envisaged circumstances.

Yoakum uses the following example to illustrate a set of rules that a user might formulate:

For example, when the user is actively participating in the communication session, the profile may dictate that no one should attempt to contact the user. When the user is an inactive participant in the communication session, the profile may dictate a select group of colleagues and a spouse that may contact the user while all others should not attempt interactive contact (column 4, lines 52-58).



Taking this example, the user has calculated a cost-benefit in excluding all individuals and groups from communicating when he is participating in a communication session and then allowing some individuals and groups to contact him when he is inactive in the communication session. An example cost for excluding all individuals and groups from communicating when he is participating in a communication session, including his wife, is that the user might not be notified of a family emergency. The user has calculated that his business at hand while participating in the communication session has greater benefit than the percentage expectancy that a family emergency will occur. These cost-benefit calculations get incorporated the user into the rules that he formulates for determining his availability. Merriam-Webster Online defines factor as "to include or admit as a factor -used with in or into<factor inflation into our calclations>, i.e. factoring is not calculating. Therefore it is inherent in the estimation of the user's availability to factor the cost-benefit calculations of the user into the estimation of availability of the user by the system.

**(10.3) Argument 2: Yoakum does not teach the feature the notification component renders graphical indicia as a function of the at least one user's device's capabilities as cited in claim 2.**

The examiner respectfully disagrees. Yoakum discloses a presence application that resides on a subscriber's device. Yoakum further discloses that, in one embodiment, the presence application is implemented in software. Furthermore, Yoakum discloses that the presence application may associate an icon with a given user and control the form of the icon in a manner indicating the best method to contact a

given user (column 10, lines 54-67, column 11, lines 25). Yoakum clearly displays user icons specific to a particular subscriber device and each subscriber device may possess different characteristics or capabilities, i.e. some may implement the presence application in software which that some subscriber devices may implement the presence application in hardware while others may implement the presence application in a combination of hardware and software. Therefore, the examiner maintains the rejection of claim 2 in light of the amendment.

**(10.4) Argument 3: Yoakum does not teach the feature the notification component dynamically renders annotations or comments as a function of the entity's state, wherein the entity inputted annotations or comments for each entity state as cited in claim 5.**

The examiner respectfully disagrees. Yoakum discloses that "provisioning may include establishing a profile for the user providing presence information. **The profile will typically identify devices and there respective participation information and states to monitor**, provide rules for evaluating the participation and state information and communication capabilities to generate the presence, and identify individuals, systems, or applications authorized to receive the information." (column 10, lines 40-47) Yoakum further discloses "based on a profile provided by the user, the presence system evaluates the participation information alone or in combination with the state information and the communication capabilities of the sources associated with the user to create the presence information to **deliver to the subscribers identifying the preferred way or a prioritized list of ways to communicate with the user** when participating in a

communication session." (column 4, lines 37-44). As disclosed by Yoakum, the entity inputs the devices to be delivered to the user singularly or in a list which identifies the preferred ways to communicate to the entity to accompany the presence information displayed to the user. Therefore, the examiner maintains the rejection of claims 5 in light of the amendment.

**(10.5) Argument 4: Yoakum does not disclose the feature the entity defines the order in which users will receive the graphical indicia representative of the entity's state as cite in claim 8.**

The examiner concedes that Yoakum does not disclose this limitation, but argues that this feature would have been obvious to one of ordinary skill to add this feature to Yoakum. Yoakum discloses a profile that "can define different categories of subscribers for which different presence information is provided. Based on available state information, the presence system can provide different views of presence for different subscribers to allow the user to **control delivery** and use of presence information. Accordingly, different subscribers may receive different presence information based on the same participation and state information and communication capabilities." (column 4, lines 44-52) Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add the entity defines the order in which users will receive the graphical indicia representative of the entity's state to Yoakum. One could have been motivated to add the entity defines the order in which users will receive the graphical indicia representative of the entity's state to Yoakum because Yoakum defines different priorities for different subscribers and it is reasonable to postulate that a user of

Yoakum would want to render information to higher priority users before lower priority users.

**(10.6) Argument 5: Yoakum does not disclose the entity defines a plurality of sets of graphical indicia representing the entity's states, each set comprises at least one graphical indicium that is different from a particular state than the other sets, the entity assigns at least one set for display to a first user and at least one other set for display to a second user as cited in claim 11.**

Yoakum discloses at column 4, lines 44-52, "The profile can define **different categories of subscribers** for which **different presence information is provided**. Based on available state information, the presence system can provide different views of presence for different subscribers to allow the user to control delivery and use of presence information. Accordingly, different subscribers may receive different presence information based on the same participation and state information and communication capabilities."

**(10.7) Argument 6: Yoakum does not disclose the feature providing multiple tiles of the at least one graphical indicia for a particular state, wherein each tile differs in part according to a user that the at least one graphical indicia will be presented as cited in claim 29.**

The examiner concedes that Yoakum does not disclose this feature, but argues that it would have been obvious to add this feature to Yoakum. Yoakum discloses subscribers ranking users whose presence information is desired (column 6, lines 36-52) and ranking communication methods associated with users ranked by subscribers

(column 11, lines 11-25). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add providing multiple tiles of the at least one graphical indicia for a particular state, wherein each tile differs in part according to a user that the at least one graphical indicia will be presented to Yoakum. One could have been motivated to add providing multiple tiles of the at least one graphical indicia for a particular state, wherein each tile differs in part according to a user that the at least one graphical indicia will be presented to Yoakum because 1) it is common in the art to graphically represent entities such as users with graphical tiles (US 2003/0020671 A1, paragraph 0019, figure 1), and 2) it would be useful to Yoakum for subscribers to rank users according to the prioritized list of communications methods associate with each user.

**(10.8) Argument 7: Yoakum does not disclose the feature the user presented a plurality of graphical indicia representative of states of a plurality of entities, the user ordering display of the graphical indicia according to priority of the entities as cited in claim 30.**

The examiner concedes that Yoakum does not disclose this feature, but argues that it would have been obvious to add this feature to Yoakum. Yoakum discloses a subscriber (user) receiving a list of a plurality of users (entities) (column 6, lines 28-31, column 10, lines 23-26) and filtering or otherwise configuring the types of presence information requested (column 13, lines 33-36). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add to Yoakum. One could have been motivated to add the user presented a plurality of graphical indicia

representative of states of a plurality of entities, the user ordering display of the graphical indicia according to priority of the entities to Yoakum because the subscriber (user) in Yoakum, as the user (entity) might have a greater need to contact some users than other users.

**(10.9) Argument 8: Yoakum does not disclose the feature automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities as disclosed in claim 31.**

The examiner concedes that Yoakum does not disclose this feature, but argues that it would have been obvious to add this feature to Yoakum. Yoakum discloses a subscriber (user) receiving a list of a plurality of users (entities) (column 6, lines 28-31, column 10, lines 23-26) and filtering or otherwise configuring the types of presence information requested (column 13, lines 33-36). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to add automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities to Yoakum. One could have been motivated to add automatically ordering display of the graphical indicia based upon the frequency of communication between the user and each of the entities to Yoakum because a user typically contacts more important users more frequently than less important users, i.e. frequency is one way to prioritize a list of users.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/John Heffington/

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/Ba Huynh/

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